

EXHIBIT 12  
DATE 02/16/07  
#B 659

Service Date: May 25, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER of the Request of  
MONTANA POWER COMPANY and  
PP&L Montana, LLC, for Determination of  
"Exempt Wholesale Generator" Status  
of PP&L Montana, LLC, under PUHCA (1935)

UTILITY DIVISION

DOCKET NO. D99.4.82

**NOTICE OF COMMISSION ACTION CONSENTING TO "EWG" STATUS**

On March 3, 1999, Montana Power Company (MPC) and PP&L Montana, LLC, (PPLM) (jointly, Applicants) filed a Request with the Montana Public Service Commission (Commission) for a determination under Section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA) (codified at 1 U.S.C. 79z-5a). Applicants attached with this request their application filed February 11, 1999 with the Federal Energy Regulatory Commission (FERC) under Docket Nos. EC99-36-000 and ER99-1799-000.

Applicants have applied to FERC for authority to transfer ownership of FERC-jurisdictional facilities from MPC to PPLM. These facilities are MPC's electric generation assets in Montana, including associated transmission facilities, except for Colstrip Unit # 4 and its correlative interest in the transmission 'stem (not in MPC's rate base) and Milltown Dam. On the sale of MPC's electric generation assets in Montana, the generation facilities will become wholesale generation, as represented by the Applicants.

For the State of Montana, the Commission has jurisdiction over the rates and charges of the generation facilities presently owned by MPC and included in MPC's rate base on or before October 24, 1992 (the date PUHCA was amended). Under PUHCA, Applicants must obtain the consent of the Commission in order to obtain FERC's qualification of these generation assets as "eligible facilities" and PPLM as an "Exempt Wholesale Generator" (EWG). 15 U.S.C. 79z-5a(c). As provided in 1 U.S.C. 79z-5a(c), the Commission "must make a specific determination that allowing a facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law."

Applicants represented that the Commission's determination of EWO status would not impede its determination in the Tier II proceeding of Docket No. D97.7.90 (the portion of the electric restructuring case on the generation sale and transition costs). Applicants requested that the Commission grant its consent to the EWG status as expeditiously as possible, as prerequisite to FERC's approval. The purchaser, PPLM, requires FERC's determination of EWG status in order to close the sale.

On April 14, 1999, the Commission issued Notice of Request for Determination of "EWG" Status, allowing the opportunity for interested persons to file comments on Applicants application before the Commission on or before April 27, 1999. The Notice was issued to the general service list for MPC and was published in newspapers statewide. The Commission stated that it would consider the comments in making the determination, but it anticipated that no further process was required by U.S.C. 79z

5a(c). There were no comments filed pursuant to the Notice in this Docket.

#### Discussion

At its duly noticed work session on May 25, 1999, the Commission addressed whether qualifying the specified generation facilities as eligible facilities for "Exempt Wholesale Generator" (EWG) status (1) would benefit consumers, (2) would be in the public interest, and (3) would not violate State law. Section 15 U.S.C. 79z-5a(c) does not provide a process for the states to render their consent to the EWG status. There are no procedural requirements within the Commission's rules or statutes or other state administrative process that govern a request for consent to EWG status. This matter is unsuited for a contested case proceeding, particularly since there was no opposition or comment rendered after the ample notice issued April 14, 1999. The Commission, therefore, makes this determination based on the application as presented by the parties.

The Montana Legislature enacted Senate Bill 390 in 1997, the "Electricity Utility Industry Restructuring and Customer Choice Act," codified at Title 69, Chapter 8, Montana Code Annotated (MCA). The Legislature established its intent to carve out generation from the

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#### Discussion

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integrated regulated public utility service, declaring that the generation and sale of electricity is becoming a competitive industry, and Montana customers should be able to choose their suppliers of electricity. (69-8-102, MCA.) The Montana Legislature deemed competition to be of benefit to consumers and in the public interest.

The 1997 Montana Legislature established methods for determining the value of generation in the contested case proceeding on the utility's restructuring and transition to customer choice: (1) estimation of future market values of the electricity; (2) appraisal of the assets; and (3) a competitive bid sale. (69-8-211, MCA.) The Legislature made it lawful for a regulated electric utility, at the utility's discretion, to divest itself of its generation assets through a competitive bid sale, in order to satisfy the requirement to separate the generation portion from the integrated public utility in moving forward to competition. At the same time, the Legislature removed the legal authority that the Commission had previously exercised over sales of utility facilities, related to the generation function only, proscribing the Commission from ordering or prohibiting a public utility from selling its generation assets. (69-8-204, MCA.)

Restructuring of public utilities and deregulation of generation (electricity supply) is the law under Title 69, Chapter 8; Montana Code Annotated, allowing for divestiture of generation. The consent of the Commission for existing rate-based facilities to become eligible for a FERC determination of "EWG" status after MPC's sale of generation assets to PPLM accords with state law.

#### Commission's Decision

The Commission at its duly noticed work session on May 25, 1999 consented to qualifying the specified generation facilities as eligible facilities on completion of the sale from MPC to PPLM. The Commission has not had the opportunity to independently assess the benefits to customers and public interest inherent in a completed sale, which it will do in the Tier 2 proceeding in Docket No. D97.7.90. This consent was granted based on Title 69, Chapter 8 Montana Code Annotated and the legislative declarations on the benefits of competition and customer choice as being in the public interest.

As provided in Section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA, codified at 15 U.S.C. 79z-5a), the Commission determined that allowing the

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identified generation facilities presently in rate base to be eligible facilities after the sale from MPC to PPLM (1 will benefit consumers, (2) is in the public interest, and (3) does not violate State law. The Commission consents to these facilities being considered eligible for FERC's determination of exempt wholesale generator "EWG" status of PPLM at the completion of MPC's sale to PPLM.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

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CERTIFICATE OF SERVICE

I hereby certify that a copy of NOTICE OF COMMISSION ACTION CONSENTING TO "EWG" STATUS, issued in D99A.82 in the matter of Montana Power Company/PP&L Montana Determination Public Utility Company Holding Act dated May 25, 1999, has today been served on all parties listed on the Commission's most recent service list, updated 4/26/99, by mailing a copy thereof to each party by first class mail, postage prepaid.

Date: May 25, 1999

For The Commission